

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA
(DIVISION 2)

**Lim v Minister for Immigration, Citizenship, Migrant Services and
Multicultural Affairs [2022] FedCFamC2G 466**

File number(s): MLG 2355 of 2021

Judgment of: **JUDGE LADHAMS**

Date of judgment: 15 June 2022

Catchwords: **MIGRATION** – application for judicial review of Administrative Appeals Tribunal decision – refusal to grant Partner (Temporary) (Class UK) visa – whether Tribunal failed to give proper, genuine and realistic consideration to corroborative evidence – whether Tribunal failed to give notice of particulars of adverse information – whether Tribunal breached s 360 of *Migration Act 1958* (Cth) – whether Tribunal made critical finding for which there was no evidence – whether Tribunal failed to give proper, genuine and realistic consideration to reg 1.15A(3) of *Migration Regulations 1994* (Cth) – no jurisdictional error – application dismissed

Legislation: *Migration Act 1958* (Cth), ss 5CB, 5F, 57, 359A, 360, 362A, 368, 376, 424A, 476, 477
Migration Regulations 1994 (Cth), reg 1.15A, Schedule 2 cl 820.211, 820.221

Cases cited: *Applicant WAEE v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 256 FCR 593; [2003] FCAFC 184
Minister for Immigration and Border Protection v SZSRs (2014) 309 ALR 67; [2014] FCAFC 16
Minister for Immigration and Citizenship v SZRKT (2013) 212 FCR 99; [2013] FCA 317
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane (2021) 395 ALR 403; [2021] HCA 41
SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs (2006) 228 CLR 152; [2006] HCA 63
SZBYR v Minister for Immigration and Citizenship (2007) 235 ALR 609; [2007] HCA 26
SZTNL v Minister for Immigration and Border Protection

(2015) 231 FCR 204; [2015] FCA 463

Division:	Division 2 General Federal Law
Number of paragraphs:	104
Date of hearing:	31 March 2022
Place:	Perth
Counsel for the Applicant:	Mr M Kenneally
Solicitor for the Applicant:	Carina Ford Immigration Lawyers
Counsel for the First Respondent:	Ms L Mills
Second Respondent:	Submitting appearance, save as to costs
Solicitor for the Respondents:	Australian Government Solicitor

ORDERS

MLG 2355 of 2021

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)

BETWEEN: HO GAN LIM
Applicant

AND: MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT
SERVICES AND MULTICULTURAL AFFAIRS
First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL
Second Respondent

ORDER MADE BY: JUDGE LADHAMS

DATE OF ORDER: 15 JUNE 2022

THE COURT ORDERS THAT:

1. The name of the first respondent is changed to ‘Minister for Immigration, Citizenship and Multicultural Affairs’.
2. The application is dismissed.

Note: The form of the order is subject to the entry in the Court’s records.

Note: The Court may vary or set aside a judgment or order to remedy minor typographical or grammatical errors (r 17.05(2)(g) *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth)), or to record a variation to the order pursuant to r 17.05 *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth).

REASONS FOR JUDGMENT

JUDGE LADHAMS:

INTRODUCTION

- 1 Before the Court is an application filed under s 476 of the *Migration Act 1958* (Cth) (Migration Act) by which the applicant seeks judicial review of a decision made by the Administrative Appeals Tribunal (Tribunal) on 24 August 2021. The Tribunal affirmed an earlier decision made by a delegate of the Minister not to grant the applicant a Partner (Temporary) (Class UK) visa (partner visa).
- 2 A number of the grounds of application allege error in relation to a finding by the Tribunal that the applicant may be in a relationship with a person, who I will refer to in this judgment as Ms L, who was not his sponsor. The applicant asserts that in reaching this finding the Tribunal failed to consider corroborative evidence of the sponsor, breached ss 359A or 360 of the Migration Act by failing to properly put the applicant on notice of its potential finding that he continued to be in a relationship with Ms L, and made the finding in the absence of evidence. The applicant also asserts that the Tribunal failed to properly consider the financial aspects of the relationship.
- 3 For the reasons explained below, I find that there is no jurisdictional error in the Tribunal decision. I therefore dismiss the application.

BACKGROUND

- 4 The applicant is a non-citizen who first arrived in Australia in November 2007. On 23 June 2016 he married Ms Nieuwenhuis (sponsor) and he applied for the partner visa on 15 July 2016.
- 5 On 20 November 2019 a delegate of the Minister made a decision not to grant the applicant a partner visa on the basis that the applicant did not meet cl 820.221(2)(d) in Schedule 2 to the *Migration Regulations 1994* (Cth) (Regulations). This was because the applicant did not satisfy the Schedule 3 criteria as the application was not validly lodged within 28 days of the applicant last holding a substantive visa and the delegate was not satisfied that there were compelling reasons for not applying the Schedule 3 criteria.

- 6 The applicant sought review of this decision and on 12 March 2020 the Tribunal remitted the application to the Department with a direction that the applicant met the criteria in cl 820.221(2)(d)(ii).
- 7 On 12 November 2020 a different delegate of the Minister made a decision not to grant the applicant a partner visa. The delegate found that the applicant did not meet the definition of spouse or de facto partner under ss 5F or 5CB of the Migration Act and therefore did not meet the requirements of cl 820.211 in Schedule 2 of the Regulations.
- 8 On the same date the applicant applied to the Tribunal for review of the delegate's decision.
- 9 On 12 March 2021 the Tribunal convened a hearing. The hearing was adjourned to give the applicant an opportunity to respond to certificates issued under s 376 of the Migration Act.
- 10 On 19 March 2021 the Tribunal sent to the applicant a letter enclosing two certificates issued pursuant to s 376 of the Migration Act, expressing the view that those certificates were valid, and inviting the applicant to comment on the validity of the certificates. The letter also invited the applicant to comment on or respond to information pursuant to s 359A of the Migration Act. The letter provided the following particulars of information relevant to the proceeding before this Court:

Folio 117: This folio indicated that a warrant was issued at [address] in an attempt to locate an unlawful noncitizen by Australian officials.

Folio 118: This folio contains an emailed note between Departmental officers regarding a conversation between you and a Departmental official after a warrant was executed at [address]. According to this record:

- You stated that your then-housemate, Ms [L], is a contractor with whom you are in a relationship while her husband is away

...

Folio 121 and 119: These folios contain an emailed note dated 22 March 2016 between Departmental officers regarding an informal interview with your housemate at [address], Ms [L]. According to this record:

- Ms [L] stated the male occupant of [address] (you) was her 'boyfriend' whom she has been dating before and after getting married to her husband
- She stated that she was not in a legitimate marriage and that she only wishes to be with her boyfriend and work
- ...

Department e-File, Department Reference ID: CLD2020/35408966: This document contains a record of an interview conducted with you by officers of the Department on 12 October 2020 for the purposes of a Bridging visa E application.

This information is not subject to a non-disclosure certificate. Please find a copy of the interview record attached. The record shows that during this interview you made statements, relevant to this review to the following effect:

- You stated that you knew Ms [L] as an ex-girlfriend and confirmed that your relationship with her ended in 2013-2014
- However, you subsequently stated that you were in a sexual relationship with Ms [L] during December 2016 to early 2017 and that you may be the father of a child born to Ms [L] in December 2017.

11 The applicant provided a submission, statements and further evidence in response to the invitation to comment.

12 The applicant, the sponsor and witnesses gave evidence at a resumed hearing on 8 April 2021.

13 On 24 August 2021 the Tribunal affirmed the decision under review.

TRIBUNAL DECISION

14 The primary issue for the Tribunal to determine was whether the applicant and the sponsor were in a genuine relationship for the purposes of s 5F of the Migration Act and cl 820.211 in Schedule 2 to the Regulations. In considering whether the applicant and the sponsor met the definition of 'spouse' in s 5F of the Migration Act, the Tribunal was required to have regard to all the circumstances of the relationship, including the specific matters listed in reg 1.15A(3).

15 The Tribunal found that the applicant and the sponsor were married in June 2016 and their marriage was valid for the purposes of the Migration Act, as required by s 5F(2)(a).

16 The Tribunal then proceeded to consider the matters in reg 1.15A(3) of the Regulations.

17 The Tribunal acknowledged the oral evidence given by the applicant and the sponsor in relation to the financial aspects of the relationship, including that they had just purchased an apartment together, they have joint insurance policies, they put their money together and stopped using individual accounts after their marriage, and they share their expenses together. However, the Tribunal did not accept the applicant's and the sponsor's oral evidence, and formed the view that the documents provided had been generated to create a positive impression of their relationship, rather than being a genuine reflection of the financial aspects of their relationship. Given its concerns, the Tribunal placed limited weight on the evidence in relation to the financial aspects of the relationship.

- 18 The applicant and the sponsor gave evidence in relation to the nature of the household, including that the applicant and the sponsor would like the applicant's son from a previous relationship to live with them, that the applicant assists the sponsor to get ready for work each day, that the sponsor cooks and the applicant cleans, and that the sponsor does the laundry, the applicant hangs it out and they fold it together. The Tribunal also referred to evidence given by the applicant and the sponsor about going to the hairdresser together, pruning trees, planting seeds and taking out the rubbish, but expressed the view that the sponsor's evidence otherwise strayed somewhat. Given the Tribunal's concerns, it gave no weight to the evidence of the nature of the household.
- 19 The applicant and the sponsor gave evidence to the Tribunal about the social aspects of the relationship. They said that they go to parties together, are recognised by their friends and acquaintances as husband and wife in a long-lasting marriage and they always participate in social activities together. The applicant called two witnesses to provide evidence to the Tribunal, but the Tribunal found both witnesses to be unconvincing because of their limited knowledge of the relationship. The Tribunal gave little weight to the evidence of the social aspects of the relationship.
- 20 In considering the nature of the persons' commitment to each other, the Tribunal acknowledged the applicant and the sponsor's evidence that they lived together for five or six years, and that the applicant supports the sponsor with her mental health. The Tribunal referred to the applicant's evidence that the relationship is based on trust and belief and that he and the sponsor support and care for each other and want a good life together. It also referred to the sponsor's evidence that they are aiming for a long-term, once in a lifetime relationship.
- 21 The Tribunal placed weight on information from the Department that the applicant had been in a relationship with Ms L during the time he claimed to be in a relationship with the sponsor and that he may be the father of her child. The Tribunal said that the sponsor sought to explain away the issue of Ms L, describing her as a friend. The Tribunal acknowledged that sexual infidelity by one of the parties to a relationship does not necessarily take the relationship outside the definition of spouse. However, having regard to all of the circumstances, the Tribunal was not convinced that the applicant was not in a relationship with Ms L. The Tribunal found the evidence of the applicant, the sponsor and their witnesses

to be unconvincing and gave little weight to the evidence of the nature of the persons' commitment to each other.

22 Overall, while the Tribunal was satisfied that the applicant and the sponsor were validly married and met s 5F(2)(a) of the Migration Act, it was not satisfied that s 5F(2)(b)-(d) were met. It followed that the applicant did not meet the definition of spouse under s 5F and therefore did not meet the criteria in cl 820.211 and 820.221 of the Regulations.

PROCEEDINGS BEFORE THIS COURT

23 The application for judicial review was filed within 35 days of the date of the Tribunal decision, as required by s 477(1) of the Migration Act.

24 By amended application filed on 3 March 2022, the applicant advances six grounds of application. Ground 5 was abandoned at the hearing and is not addressed. The other five grounds are set out under separate headings below.

25 At the commencement of the hearing on 31 March 2022, I dealt with an application in a proceeding brought by the applicant, by which the applicant sought leave to file three further affidavits that were said to be relevant to materiality in relation to ground 3. The application in a proceeding and an affidavit in support, which attached the three affidavits that the applicant sought leave to file, was filed the day prior to the hearing.

26 Mr Kenneally acknowledged that the affidavits should have been provided earlier. He submitted that the applicant's primary submission is that if there is a breach of s 360 of the Migration Act, the applicant does not need any evidence to establish materiality and the Court can infer that he could have said something useful if the issue had been put to him. The affidavits provided evidence of what the applicant could have told the Tribunal if it had been put to him that he was still in a relationship with Ms L.

27 The Minister opposed the application for leave to file the affidavits, on the basis that the Minister's position is that the affidavits are not relevant, and also because the affidavits were provided so late in the proceeding. Ms Mills confirmed in her submissions that the Minister would not submit that any breach of s 360 would not be material.

28 In circumstances where materiality would not be an issue, Mr Kenneally acknowledged that the affidavits would not be necessary. I made an order at the hearing refusing leave to the applicant to rely on the three affidavits. In my view, the interests of the administration of

justice did not require the applicant to be granted leave to file three affidavits outside of the time allowed by the existing orders, and on the eve of the hearing, in circumstances where those affidavits do not address an issue that is in dispute between the parties. While I had not, at the time of the hearing, formed any view about whether there was a breach of s 360 of the Migration Act, I was satisfied, taking into account the submissions of the parties, that it would be appropriate to proceed on the basis that if the Tribunal did breach s 360 of the Migration Act, the breach would be material.

GROUND 1

29 Ground 1 reads:

The Tribunal erred by failing to consider or give proper, genuine and realistic consideration to the corroborative evidence of the sponsor.

Particulars

- a) On 18 July 2016, the applicant applied for a partner visa, claiming to be the spouse of his wife (**sponsor**) whom he married on 23 June 2016.
- b) The applicant needed to establish at the time of application and the time of decision that he was the spouse of his wife within the meaning of s 5F of the Act.
- c) The Tribunal was required to consider the mandatory considerations in reg 1.15A(3) of the *Migration Regulations 1994* in determining whether s 5F of the Act was satisfied.
- d) On 19 March 2021, the Tribunal put to the applicant adverse information that:
 - i. on 21 March 2016 the applicant and a woman Ms [L] had told officers from the Department of Immigration that they were living together and in a relationship;
 - ii. on 12 October 2020 the applicant had revealed that he had had sex with Ms [L] in late 2016 and early 2017.
- e) The applicant admitted to the Tribunal that he had a sexual relationship with Ms [L], but said that he had told the sponsor, and the applicant and sponsor had moved out of shared accommodation.
- f) The Tribunal found at [58] that it was not convinced the applicant was not still in a relationship with Ms [L] at the time of decision.
- g) The Tribunal's finding that the applicant was in a relationship with Ms [L] or may be in a relationship with Ms [L] was the dispositive issue in the review as it led the Tribunal to give limited or no weight to the applicant's evidence in relation to the mandatory considerations in reg 1.15A(3) of the *Regulations*.
- h) The sponsor gave oral and documentary evidence that the applicant had revealed his infidelity with Ms [L], and after that disclosure the applicant and

sponsor had moved out of the shared accommodation.

- i) The Tribunal in reaching that finding failed to consider or give proper, genuine, and realistic consideration to the sponsor's evidence at particular (h) which corroborated the applicant's account of his infidelity.
- j) The evidence at particular (h) was cogent and material to the outcome of the review.
- k) Had the Tribunal considered the evidence of the sponsor it may have found that: the applicant was not in a relationship with Ms [L] at the time of decision, or at the time of application that was inconsistent with the applicant being the sponsor's spouse pursuant to s 5F of the Act.

Applicant's submissions

30 The applicant submitted that the Tribunal erred by failing to consider or give proper, genuine and realistic consideration to the corroborative evidence of the sponsor that the applicant disclosed his affair with Ms L to the sponsor, they moved out of shared accommodation as a result and there had been no ongoing issues.

31 The applicant submitted that it can be inferred that the corroborative evidence was not considered. The Tribunal is required to give reasons for its decision, set out the findings on any material questions of fact and refer to the evidence on which those findings are based. If evidence is omitted from the statement of reasons it can be inferred that it has not been considered, and the key question in this regard is whether the evidence omitted from the reasons could have supported a different finding of fact on a dispositive issue. If so, then it is more likely the failure to refer to the evidence reveals that it was not considered.

32 The applicant submitted that the Tribunal's only reference to the sponsor's evidence in relation to the relationship between Ms L and the applicant was at [56] where the Tribunal said:

In her evidence, the sponsor sought to explain away the issue of Ms [L], describing her as a friend.

33 The applicant submitted that this did not fairly reflect the sponsor's evidence as a whole, and did not reflect the following evidence of the sponsor:

(a) a joint statement dated 9 March 2021, in which the applicant and sponsor said:

After getting married, [the sponsor] found a casual job at Mildura. In the beginning, we only joint rented a house with other people in Mildura, however we then moved out, after [the applicant] admitted to [the sponsor] that he had been unfaithful. We worked past this issue and our relationship never broke down nor ended

- (b) the sponsor's response at the hearing addressing whether the applicant was the father of Ms L's child, specifically:

Thai interpreter: No, I don't know because [Ms L] likes going out, I don't know who she slept with. I don't know, Member.

Senior Member Woods: Has Mr. Lin discussed with you the possibility that it may be him?

...

Thai interpreter: He mentioned it, but he's not 100% certain because she likes going to the pub. She likes partying, Member.

Senior Member Woods: What was your response when he mentioned it to you?

...

Thai interpreter: I was a bit upset. I was upset but it's okay, but that's normal...

- (c) the sponsor's oral confirmation in response to the applicant's disclosure of infidelity that the applicant and the sponsor moved out of the shared rental accommodation, which was corroborated by the lease from February 2017.

34 The applicant submitted at [36] of his written submissions:

It can be inferred the Tribunal did not consider or give proper, genuine, or realistic consideration to the oral and documentary evidence provided by the sponsor regarding Ms [L] as:

- a. The dispositive issue in the review was that the applicant remained in a committed relationship with Ms [L].
- b. The sponsor's evidence corroborated the applicant's narrative that he disclosed his infidelity, the couple took action to end the infidelity (i.e. moving house), and the infidelity did not result in a dissolution of the marriage.
- c. If the applicant's relationship with the sponsor were not genuine then there would have been no need for him to disclose the infidelity or for the couple to take action by moving out of the rental property with Ms [L]. The disclosure itself suggests that the applicant's behaviour was – at least from the sponsor's perspective – a transgression. This implies that between the parties there was an understanding their relationship was to the exclusion of all others.
- d. If the Tribunal accepted the evidence, it could have led to a different finding on the dispositive issue, i.e. the Tribunal could have been satisfied that whatever relationship the applicant had with Ms [L] had ended around 2017.
- e. The Tribunal's reasons did not refer to the sponsor's oral or written evidence that the infidelity was disclosed and the couple moved as a result. While the Tribunal referred to the lease and the joint statement, it did not identify either as corroborating this narrative regarding the infidelity.

35 The applicant then submitted that the failure to consider the evidence amounted to a jurisdictional error because:

- (d) the evidence was cogent, as reflected in the Tribunal making no adverse credit findings in relation to the sponsor's evidence that the applicant told her about his infidelity; and
- (e) the evidence was material in the assessment of the claims because, had the Tribunal considered the sponsor's evidence, it could have found that the infidelity ended in 2017 and this could have led to its finding that the applicant and sponsor were in a genuine relationship at the time of the decision and the Tribunal could also have inferred that the relationship was genuine at the time of the application despite the applicant's infidelity.

36 In oral submissions, Mr Kenneally summarised that the relevance of the corroborative evidence is that the evidence of disclosure suggests that the relationship is genuine and that the applicant's infidelity constituted a transgression. If the relationship were not genuine, why would the applicant tell the sponsor and why would they move house?

37 Mr Kenneally made two points in response to the Minister's submissions, which are summarised below. First, the Minister's reference to the Tribunal's findings at [47] of its reasons about the length of time the applicant and the sponsor have lived together to some extents picks up that they moved out together around the time of the disclosure of the infidelity, but does not address that they moved out of the house that they had been living in with Ms L and that they moved out in response to the affair. Second, the Tribunal's finding at [59] that it found the evidence of both the applicant and the sponsor unconvincing is not sufficient, because the particular evidence that is the subject of this ground was so significant that it could not be caught by a general statement that the Tribunal had not been persuaded.

Minister's submissions

38 The Minister submitted that the Tribunal's reference to the sponsor's evidence at [56] of its reasons was not the only reference to the sponsor's evidence expressly referred to in its reasons. The Tribunal also:

- (f) noted that the applicant said they had lived together for six years and the sponsor said over five years (at [47]), which corroborated the applicant's evidence that they did not live with Ms L after approximately 2016; and

(g) found the evidence of the sponsor to be ‘unconvincing’ at [59].

39 In response to the applicant’s submission that the sponsor’s evidence corroborated his narrative that he disclosed his infidelity and then the applicant and sponsor moved out, the Minister submitted that the Tribunal did not make any finding to the contrary. Rather, the Tribunal found at [58] that ‘in all the circumstances, the Tribunal is not convinced that the applicant isn’t in fact in a relationship with Ms [L]’, and at [63] that the applicant and the sponsor did not have a genuine and continuing relationship.

40 The Minister further submitted that the fact that the Tribunal did not specifically refer to the sponsor’s evidence that after the applicant disclosed to her his sexual relationship with Ms L the applicant and sponsor moved to a different property, does not mean that the matter was not considered by the Tribunal at all. Rather, in circumstances where the Tribunal did not make a finding that the applicant and sponsor continued to live with Ms L after this time, the corroborative evidence of the sponsor should be understood as having been considered but not mentioned because it was not material.

Resolution

41 Although the parties have referred to different cases in their respective submissions, there does not appear to be any real dispute between the parties as to the relevant principles.

42 The starting point for considering this ground is s 368 of the Migration Act, which requires that the Tribunal’s written statement must, amongst other things, set out the decision of the Tribunal, set out the reasons for the decision, set out findings on any material questions of fact, and refer to the evidence or any other material on which the findings of fact were based. It is clear from this that the Tribunal is not required to refer to findings on questions of fact that are not material and is not required to specifically refer to every item of evidence.

43 There are a number of cases in which the courts have considered how one should approach the task of determining whether evidence that was not mentioned in a decision-maker’s reasons has been overlooked by the decision-maker.

44 In this regard, the Minister relied on *Minister for Immigration and Border Protection v SZSRS* (2014) 309 ALR 67; [2014] FCAFC 16, where the Full Court of the Federal Court said at [34]:

The fact that a matter is not referred to in the Tribunal’s reasons, however, does not necessarily mean the matter was not considered by the Tribunal at all: *SZGUR* at

[31]. The Tribunal may have considered the matter but found it not to be material. Likewise, the fact that particular evidence is not referred to in the Tribunal's reasons does not necessarily mean that the material was overlooked. The Tribunal may have considered it but given it no weight and therefore not relied on it in arriving at its findings of material fact. But where a particular matter, or particular evidence, is not referred to in the Tribunal's reasons, the findings and evidence that the Tribunal has set out in its reasons may be used as a basis for inferring that the matter or evidence in question was not considered at all. The issue is whether the particular matter or evidence that has been omitted from the reasons can be sensibly understood as a matter considered, but not mentioned because it was not material. In some cases, having regard to the nature of the applicant's claims and the findings and evidence set out in the reasons, it may be readily inferred that if the matter or evidence had been considered at all, it would have been referred to in the reasons, even if it were then rejected or given little or no weight: *MZYTS* at [52].

45 The applicant cited *Applicant WAEE v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 256 FCR 593; [2003] FCAFC 184 at [46]-[47] to support the proposition that if evidence omitted from the reasons could have supported a different finding of fact on a dispositive issue, it is more likely that the failure to refer to evidence reveals that it was not considered. In that case, the Full Court said at [46]-[47]:

46. It is plainly not necessary for the Tribunal to refer to every piece of evidence and every contention made by an applicant in its written reasons. It may be that some evidence is irrelevant to the criteria and some contentions misconceived. Moreover, there is a distinction between the Tribunal failing to advert to evidence which, if accepted, might have led it to make a different finding of fact (cf *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323 at [87]-[97]) and a failure by the Tribunal to address a contention which, if accepted, might establish that the applicant had a well-founded fear of persecution for a Convention reason. The Tribunal is not a court. It is an administrative body operating in an environment which requires the expeditious determination of a high volume of applications. Each of the applications it decides is, of course, of great importance. Some of its decisions may literally be life and death decisions for the applicant. Nevertheless, it is an administrative body and not a court and its reasons are not to be scrutinised 'with an eye keenly attuned to error'. Nor is it necessarily required to provide reasons of the kind that might be expected of a court of law.
47. The inference that the Tribunal has failed to consider an issue may be drawn from its failure to expressly deal with that issue in its reasons. But that is an inference not too readily to be drawn where the reasons are otherwise comprehensive and the issue has at least been identified at some point. It may be that it is unnecessary to make a finding on a particular matter because it is subsumed in findings of greater generality or because there is a factual premise upon which a contention rests which has been rejected. Where however there is an issue raised by the evidence advanced on behalf of an applicant and contentions made by the applicant and that issue, if resolved one way, would be dispositive of the Tribunal's review of the delegate's decision, a failure to deal with it in the published reasons may raise a strong inference that it has been overlooked.

46 The applicant also relied on the following passage at [112] of *Minister for Immigration and Citizenship v SZRKT* (2013) 212 FCR 99; [2013] FCA 317 in relation to the importance of corroborative evidence:

... whether the Tribunal is obliged to consider a document or documents will depend on the circumstances of the case and the nature of the document. In my opinion, the relevant factors in relation to (corroborative) evidence include first, the cogency of the evidentiary material and, second, the place of that material in the assessment of the applicant's claims. To the extent that the Minister's submissions involved the contention that it is always the case that these matters may be dealt with without reference to the Tribunal's reasons I do not agree.

47 Taking these principles into account, I am not satisfied in the present case that the Tribunal overlooked or failed to meaningfully consider the corroborating evidence of the sponsor.

48 There are two aspects of the evidence that the applicant, in the written application, claims that the Tribunal overlooked and a further matter raised in submissions without any application to amend the ground.

49 The first matter raised in the written application is that the applicant disclosed to the sponsor his infidelity. It is apparent that the Tribunal understood the sponsor was aware of the applicant's infidelity with Ms L. This is apparent from the Tribunal's reference at [56] of its reasons to the sponsor having 'sought to explain away the issue of Ms [L], describing her as a friend'. I do not accept that the Tribunal overlooked evidence that the applicant disclosed his infidelity to the sponsor, and in the circumstances of this case, the brevity of the Tribunal's reasons does not indicate that the Tribunal did not give the evidence proper genuine and realistic consideration.

50 The applicant submits to this Court that the fact of disclosure of the infidelity is significant because there is no need to disclose infidelity if the relationship is not genuine. Nothing in this submission gives rise to jurisdictional error in the Tribunal decision. The applicant has not referred me to any evidence that was before the Tribunal as to how or why he disclosed his infidelity, or any aspect of his case before the Tribunal where he submitted that the significance of the disclosure is that it shows the genuineness of the relationship. That the relationship between the applicant and the sponsor is genuine is not the only inference, or the obvious inference, that can be drawn from the fact that the applicant admitted his infidelity, particularly in the absence of evidence as to the reasons for and circumstances of that disclosure.

- 51 The second aspect of the evidence referred to in the applicant's written application is the sponsor's evidence that following the disclosure of the applicant's infidelity, the applicant and sponsor moved out of the house that they had been sharing with Ms L and her husband. While the Tribunal did not expressly refer to the evidence that the applicant and sponsor moved into a different property after the sponsor became aware of the applicant's infidelity, this does not mean that it was not considered by the Tribunal. The Tribunal considered the evidence of the applicant, the sponsor, and the witnesses in relation to the nature of the commitment and found that evidence to be unpersuasive. In the context of this matter, I interpret the Tribunal's finding that the evidence of the sponsor in relation to the nature of the commitment was unpersuasive to include the evidence that the applicant and sponsor moved out of the share house after the applicant's infidelity was disclosed.
- 52 For completeness, I do not draw any inferences for the purposes of this ground from the Tribunal's reference at [47] to the length of time that the applicant and sponsor said they had been living together. The approximate periods of time referred to in this paragraph are consistent with the evidence referred to elsewhere by the Tribunal that the applicant and sponsor commenced living together in November 2015. The evidence at [47] does not support any finding that the applicant and sponsor moved out of the accommodation they shared with Ms L sometime in or after 2017.
- 53 In his submissions, the applicant also referred to evidence in the joint statement that the relationship never broke down nor ended after the applicant disclosed his infidelity. This is not part of the pleaded ground, but in any event does not establish jurisdictional error. The Tribunal was clearly aware that the applicant and the sponsor claimed to be in an ongoing and continuing relationship and rejected that evidence.
- 54 In addition to the reasons given above, I observe that the Tribunal has addressed the evidence before it at a high level of generality. The evidence favourable to the applicant and the evidence adverse to the applicant is addressed at a similarly high level of generality. In these circumstances, it is more difficult to infer that the Tribunal overlooked the corroborative evidence of the sponsor than it might have been had the Tribunal addressed other evidence at a high level of specificity.
- 55 Ground 1 does not establish jurisdictional error.

GROUND 2

56 Ground 2 reads:

The Tribunal failed to comply with s 359A(1)(b) of the Act.

- a) The applicant repeats and relies on particulars (a) to (g) in ground 1.
- b) The Tribunal was required by s 359A(1)(a) of the Act to give the applicant particulars of the adverse information in the notice dated 17 March 2021 (**Notice**), and also pursuant to s 359A(1)(b) of the Act ‘ensure, as far as is reasonably practicable, that the applicant’ understood the the information was ‘relevant to the review, and the consequences of it being relied on in affirming the decision that is under review’.
- c) The Notice stated that the evidence of the applicant being in a relationship with Ms [L] in March 2016 and having sexual relations with Ms [L] in late 2016 to early 2017 ‘is not consistent with your claim to be in a genuine spousal relationship with the sponsor’
- d) The Tribunal did not state in the Notice, nor would it have been reasonably understood by the applicant from the context of the issues, that the information in the Notice was relevant because it indicated the applicant remained in a relationship with Ms [L].
- e) Therefore, the Tribunal failed to comply with s 359A(1)(b).

Applicant's submissions

57 The applicant submitted that the letter sent to the applicant pursuant to s 359A of the Migration Act on 17 March 2021 only put to the applicant that the adverse evidence of his relationship with Ms L in 2016 and 2017 was inconsistent with his claim to be in a genuine relationship with the sponsor. The Tribunal did not ensure that the applicant understood that the adverse information was relevant to the review because it would demonstrate that he was still in a relationship with Ms L four years after he claimed to have last had a sexual relationship with her. In oral submissions, Mr Kenneally emphasised that the reference to the evidence in the notice refers entirely in the past tense to the applicant having had a sexual relationship with Ms L and being the father of a child born in December 2017.

58 The applicant submitted that the distinction between the Tribunal’s finding that a relationship between the applicant and Ms L existed in 2016 or 2017 as opposed to its finding that the relationship existed from 2016 to 2021 was significant as the latter had the effect that the Tribunal gave no weight to any of the applicant’s supporting evidence and strengthened the inference that the relationship with Ms L was a serious relationship inconsistent with the requirements of s 5F(2) of the Migration Act.

- 59 The applicant also submitted that it was not so obvious in the context of the review that the conclusion to be drawn from the adverse information was that the Tribunal would find that the applicant may still be in a relationship with Ms L. The delegate did not find that the applicant's relationship with Ms L had been ongoing and the notices issued by the delegate on 4 August 2020 and 16 November 2020 did not identify any direct evidence that the applicant was still in a relationship with Ms L. Further, the material before the Tribunal did not readily support the inference of an ongoing relationship with Ms L and by the time of its decision, four years had passed since the last evidence of a sexual relationship between the applicant and Ms L.
- 60 The applicant submitted that the Tribunal's failure to alert the applicant that the adverse information could support a finding that the relationship with Ms L was, or could be, ongoing amounted to a failure to comply with s 359A.

Minister's submissions

- 61 The Minister submitted that it was clear from the notice that the relevance and consequence of the adverse information was not limited to evidence of the applicant's relationship in 2016 and 2017 only or limited only to circumstances that existed at that time, and instead gave notice that the information was relevant to whether the applicant and sponsor *are* in a genuine spousal relationship and the information was not consistent with this claim.
- 62 The Minister further submitted that in the applicant's response to the s 359A notice, he denied any current relationship with Ms L and this is consistent with the applicant's understanding that the relevance of the adverse information and notice was not limited to his relationship in 2016 and 2017. The Tribunal considered the applicant's denial in its decision.
- 63 The Minister submitted that the Tribunal's concern that the applicant's relationship with Ms L had not ended did not have the effect that the Tribunal gave *no* weight to *any* of the applicant's supporting evidence. The Tribunal's rejection of the applicant's oral evidence in relation to the financial aspects of the relationship, and concerns about the evidence of the nature of the household and social aspects of the relationship, were not limited only to, or referable to, the concerns about whether or not there was an ongoing relationship between the applicant and Ms L. The Tribunal gave little weight to the evidence of the nature of the persons' commitment to each other due to many factors set out in its decision.

64 The Minister submitted that the prospective finding that the applicant may still be in a relationship with Ms L was included within the scope of the s 359A notice and it was therefore not necessary for the Court to find that the prospect of that finding was obvious in the context of the review. In any event, the Minister submitted that the prospect of the finding was obvious taking into account notices sent to the applicant pursuant to s 57 of the Migration Act on 19 December 2016, 2 May 2017 and 4 August 2020, which included language that the applicant and Ms L were in a relationship ‘prior to and thereafter [the applicant’s] marriage to [his] sponsor’ and that the relationship with Ms L was ‘current and ongoing’.

Resolution

65 In considering this ground, I proceed on the basis that it is accepted by both parties that the Tribunal gave to the applicant clear particulars of information that the Tribunal considered would be the reason or part of the reason for affirming the delegate’s decision. The sole issue is whether the Tribunal complied with s 359A(1)(b) of the Migration Act by ensuring, as far as reasonably practicable, that the applicant understood why the information was relevant to the review and the consequences of it being relied on in affirming the delegate’s decision.

66 I find that this ground does not establish jurisdictional error for two main reasons.

67 First, the reason that the information was relevant to the review was explained by the Tribunal in the notice dated 19 March 2021 in the following terms:

This information is relevant to the review because it is a requirement for the grant of the visa that you and the sponsor are in a genuine spousal relationship: cl 820.211.

...

The information that you and Ms [L] each made statements to Departmental officials stating that you were housemates in a relationship is relevant to the review because it is not consistent with your claim to be in a genuine spousal relationship with the sponsor.

The information that you gave during your interview for a Bridging visa E on 12 October 2020, that you had had a sexual relationship with Ms [L] during December 2016 to early 2017, and that you may be the father of a child born to her in December 2017, is relevant to the review because you have claimed to have been in a relationship with the sponsor at that time and it is not consistent with your claim to be in a genuine spousal relationship with the sponsor.

68 The Tribunal also explained in the notice the consequences of it relying on the information:

If we rely on this information in making our decision, we may find that considered cumulatively the information above shows that you are not in genuine spousal

relationship with your sponsor. If the Tribunal so finds, this would be the reason or part of the reason for affirming the decision under review.

69 It is clear from this that the Tribunal considered that the relevance of the information was that it might cause the Tribunal to find that the applicant and the sponsor ‘are not in a genuine spousal relationship’. I consider that the Tribunal, in the notice, adequately explained the relevance of the information, with reference to the relevant legislative criteria. In this regard, I note that in *SZBYR v Minister for Immigration and Citizenship* (2007) 235 ALR 609; [2007] HCA 26 at [17], the High Court said in relation to s 424A, which is the Part 7 equivalent to s 359A:

The reasons for affirming the decision that is under review is a matter that depends upon the criteria for the making of that decision in the first place. The Tribunal does not operate in a statutory vacuum, and its role is dependent upon the making of administrative decisions upon criteria to be found elsewhere in the Act.

70 By using the present tense phrase ‘**are** not in a genuine spousal relationship’, the Tribunal has clearly indicated that its concerns about the genuineness of the relationship between the applicant and the sponsor were not limited to a particular point in time in 2016 and 2017, but rather continued to the time of the review by the Tribunal.

71 The Tribunal was not, in my view, required for the purposes of s 359A(1)(b) of the Migration Act to identify the relevance of the information as being that the Tribunal might find that the applicant continued to be in a relationship with Ms L up to and including 2021. It was sufficient in the circumstances of this case for the Tribunal to identify the relevance of the information with regard to the legislative criteria for the visa.

72 Second, I am satisfied in any event that the applicant understood, or ought to have understood, that the information might be relied on for a finding that he continued to be in a relationship with Ms L. The Department in this matter sent to the applicant four notices pursuant to s 57 of the Migration Act. Mr Kenneally acknowledged in his oral submissions that it is sufficient if the Tribunal could be confident that the applicant understood the relevance from a combination of notices and other circumstances, citing *SZTNL v Minister for Immigration and Border Protection* (2015) 231 FCR 204; [2015] FCA 463 at [40].

73 At least two of the s 57 notices, including the notice sent to the applicant on 4 August 2020, put to the applicant that ‘[y]ou have been in a relationship with [Ms L] prior and thereafter your marriage to your sponsor’. The applicant submitted that this is simply an indication that the decision-maker may not accept that the relationship with Ms L ended immediately after

the gathering of the evidence, and does not put the applicant on notice that the decision-maker may find that the relationship continued for a further four years. I do not accept this submission. The notice clearly indicated that the information may suggest that the applicant had been in a relationship with Ms L after his marriage to the sponsor. This was not limited to any particular point in time.

74 I do not accept the applicant's submission regarding the significance of the distinction between a possible finding that the applicant was in a relationship with Ms L in 2017 and a possible finding that the applicant continued to be in a relationship with Ms L at the time of the decision (see [58] above). Rather, I accept the Minister's submission that the Tribunal did not reject all of the applicant's evidence solely on the basis that it was not convinced that the applicant was not in a relationship with Ms L, but gave other reasons also for rejecting the evidence of the applicant and the sponsor.

75 Ground 2 is not established.

GROUND 3

76 Ground 3 reads:

The Tribunal failed to comply with s 360 of the Act.

- a) The applicant repeats and relies on particulars (a) to (g) in ground 1.
- b) The Tribunal was required pursuant to s 360 of the Act to invite the applicant to a hearing to 'give evidence and present arguments relating to the issues arising in relation to the decision under review'.
- c) The decision under review was that of the delegate dated 12 November 2020.
- d) The delegate found the applicant's genuine relationship as of 2016 was with Ms [L] not the sponsor but did not find the applicant remained in a relationship with Ms [L].
- e) The Tribunal's finding the applicant was still in a relationship with Ms [L] was an issue that did not arise from the delegate's decision and was unexpected by the applicant.
- f) The Tribunal's failure to put to the applicant that he was still in a relationship to review was material to the outcome of the review, as the applicant could have persuaded the Tribunal that his sexual relations with Ms [L] ended in early 2017, and that those relations were not incompatible with him being in a genuine marriage with the sponsor at the time of application.

Applicant's submissions

- 77 The applicant submitted that, further or alternatively to ground 2, the Tribunal failed to comply with s 360 of the Migration Act by not putting him on notice that it would find that the relationship with Ms L was ongoing or may be ongoing.
- 78 Referring to *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 228 CLR 152; [2006] HCA 63 (*SZBEL*) at [34]-[35], [37], the applicant submitted that the Tribunal failed to comply with s 360 because it determined the review based on an issue that did not arise from the delegate's decision without putting him on notice of that issue. The applicant submitted that the delegate did not find that the relationship between the applicant and Ms L was ongoing and the issue did not clearly arise from the material before the Tribunal.

Minister's submissions

- 79 The Minister submitted that it was apparent that the applicant was on notice of the issue of his relationship with Ms L, including whether it was ongoing and continued to be ongoing after the marriage to his sponsor, and the effect of this relationship with Ms L on whether he was in a genuine relationship with the sponsor.
- 80 The Minister further submitted that the issues were not issues other than those that the delegate considered dispositive. The delegate referred to the natural justice letters sent to the applicant in relation to his relationship with Ms L and the applicant's denials of the relationship, and made the following finding:

I find however that when taking all characteristics of the claimed relationship into consideration that your relationship with Ms [L] was not an extra marital affair, but that you were not in a genuine relationship with your sponsor and that your genuine relationship was with Ms [L].

Resolution

- 81 Section 360(1) of the Migration Act provides that the Tribunal must invite the applicant to appear before the Tribunal to give evidence and present arguments relating to the issues arising in relation to the decision under review.
- 82 In *SZBEL*, the High Court said at [35]:

The Tribunal is not confined to whatever may have been the issues that the delegate considered. The issues that arise in relation to the decision are to be identified by the Tribunal. But if the Tribunal takes no step to identify some issue other than those that the delegate considered dispositive, and does not tell the applicant what that other

issue is, the applicant is entitled to assume that the issues the delegate considered dispositive are “the issues arising in relation to the decision under review”. That is why the point at which to begin the identification of issues arising in relation to the decision under review will usually be the reasons given for that decision. And unless some other additional issues are identified by the Tribunal (as they may be), it would ordinarily follow that, on review by the Tribunal, the issues arising in relation to the decision under review would be those which the original decision-maker identified as determinative against the applicant.

83 I am satisfied that the applicant was on notice that his relationship with Ms L was an issue in the proceeding, and that it may cause the Tribunal to find that his relationship with the sponsor was not genuine. The applicant was invited under s 57 of the Migration Act to comment on information about the issue of Ms L on four separate occasions and he was also invited by the Tribunal to comment on the information about his relationship with Ms L pursuant to s 359A of the Migration Act. As explained above, in my view, the notices did not confine the issue to a particular point in time. The simple fact that the delegate made a past tense finding that the applicant’s ‘genuine relationship **was** with Ms [L]’ does not, in the light of the various s 57 notices and the matters before the Tribunal, limit any potential finding about the relationship to the past tense. In any event, the Tribunal’s use of the present tense in the s 359A notice, namely, that the information about Ms L might cause the Tribunal to find that the applicant and the sponsor ‘**are** not in a genuine spousal relationship’ should have put the applicant on notice that the Tribunal had ongoing concerns about a relationship between the applicant and Ms L, including a potential finding that he remained in a relationship with Ms L.

84 Ground 3 is not established.

GROUND 4

85 Ground 4 reads:

The Tribunal made a critical finding for which there was no evidence and/or the Tribunal’s state of satisfaction that the applicant was irrational, illogical as it was based on a finding for which there was no evidence.

- a) The applicant repeats and relies on particulars (a) to (g) in ground 1.
- b) There was no evidence for the Tribunal’s finding that the applicant was in a relationship with Ms [L] at the time of decision.
- c) The error was material to the outcome of the review.

Applicant's submissions

86 The applicant submitted that there was no evidence to support the finding that the applicant's relationship with Ms L was ongoing. There was no evidence that the applicant had lived with Ms L after 2017, or had any contact with her after October 2019. The finding that the relationship was ongoing was central to the Tribunal's ultimate conclusion that the applicant did not satisfy s 5F of the Migration Act, and therefore cl 820.211 and 802.221 of the Regulations, at the time of the application or at the time of the Tribunal decision.

Minister's submissions

87 The Minister submitted that the Tribunal's finding in relation to the applicant and Ms L was not made in the absence of *any* evidence or supporting material as the applicant asserts. The relevant evidence that supported the finding included the adverse information set out in the s 359A notice, summarised in relation to ground 2 above, along with the Tribunal's finding that the evidence of the applicant, the sponsor and their witnesses was unconvincing.

Resolution

88 In *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane* (2021) 395 ALR 403; [2021] HCA 41, the High Court said at [17]:

If the Minister exercises the power conferred by s 501CA(4) and in giving reasons makes a finding of fact, the Minister must do so based on some evidence or other supporting material, rather than no evidence or no material, unless the finding is made in accordance with the Minister's personal or specialised knowledge or by reference to that which is commonly known. By "no evidence" this has traditionally meant "not a skerrick of evidence".

89 In the present matter there was evidence from which it was open to the Tribunal to infer that the applicant may still be in a relationship with Ms L. There was clearly evidence before the Tribunal to support a finding that the applicant and Ms L had engaged in a sexual relationship in 2016 to 2017. The Tribunal rejected the applicant's explanations about this relationship and rejected his assertions that there were interpretation errors in his previous interactions with the Department. I accept the submission of Ms Mills, on behalf of the Minister, that it was the evidence from the earlier point in time, along with the Tribunal's finding that the applicant's evidence was unconvincing, that provided an evidentiary basis for the Tribunal not being satisfied that the applicant was not in a relationship with Ms L.

90 I do not accept the submission that there was no evidence that the applicant even had contact with Ms L after October 2019.

91 In an interview in relation to a bridging visa application conduct of the officer of the Department on 12 October 2020, the applicant was asked:

Can I presume you have been in contact with Ms [L] all this time because you only just resigned from the company in October 2019?

92 The applicant answered in the present tense:

Yes we do. We maintain the contact with each other since 2019.

93 This clearly suggests that the applicant and Ms L maintained contact after 2019.

94 Ground 4 is not established.

GROUND 6

95 Ground 6 reads:

The Tribunal failed to consider or give proper, genuine, and realistic consideration to a mandatory relevant consideration pursuant to reg 1.15A(3) of the *Regulations* being the financial nature of the relationship.

Particulars

- a) The applicant and sponsor provided documentary evidence of their financial arrangements including: lease documents; contract of sale for an apartment; joint bank statements; a life insurance policy; and evidence that the sponsor's own bank account was no longer in use.
- b) The Tribunal found given its concern the applicant was in a relationship with Ms [L] the documents had been 'generated' to assist the visa application.
- c) The Tribunal's reasons provide no explanation as to what is meant by 'generated'.
- d) It can be inferred the Tribunal did not consider the financial arrangements between the applicant and the sponsor as illustrated in the documents and therefore failed to complete its task to make findings under reg 1.15A(3).
- e) The error was material as a finding that the applicant had pooled resources and purchased property together could have affected the finding that the applicant was still in a relationship with Ms [L].

Applicant's submissions

96 The applicant submitted that the Tribunal failed to make a finding on financial aspects of the relationship as required under reg 1.15A(3)(a). The Tribunal at [30] acknowledged that the applicant and sponsor provided documentary evidence that they had purchased real estate, had life insurance policies and joint bank accounts. The Tribunal did not accept the applicant's oral evidence given its finding that the applicant remained in a relationship with

Ms L, and found that the documents had been ‘generated’ to support the visa application and did not genuinely reflect the financial aspects of the relationship.

97 The applicant submitted that there were various documents before the Tribunal, including a contract of sale for an apartment, joint bank statements, a life insurance policy, and evidence that the sponsor no longer uses her own bank accounts, which on their face were evidence of the financial aspects of the relationship. The applicant submitted that the word ‘generated’ in the Tribunal reasons at [30] is unclear because the Tribunal did not find the documents to be fraudulent or forgeries, and did not specify who generated the documents or what conduct constituted ‘generating’ the documents.

98 The applicant submitted that, while the finding that the applicant was in a relationship with Ms L might lead to the financial documents being given less weight, the Tribunal was required to make a finding on the financial nature of the relationship based on those documents and failed to complete this task.

Minister’s submissions

99 The Minister submitted that the Tribunal’s concerns in relation to the applicant’s oral evidence were not limited to those that were dependent on its finding that the applicant remained in a relationship with Ms L. Rather, the Tribunal did not accept the applicant’s and the sponsor’s oral evidence on the basis of its assessment of the case as a whole. The Minister submitted that the word ‘generated’ does not represent a finding that the documents were fraudulent or forgeries. In context, the Tribunal’s view that the financial documents were generated to create a positive impression of the parties’ relationship refers to financial documents being created legitimately by the applicant to reflect a relationship, rather than as a consequence of a genuine relationship. The Minister submitted that reg 1.15A requires the Tribunal to consider all the circumstances of the relationship including the financial aspects of the relationship. The Tribunal considered the financial aspects of the relationship at [24]-[30] of its reasons and placed limited weight on the evidence of the financial aspects of the relationship. This was sufficient to fulfil the Tribunal’s obligations.

Resolution

100 The Tribunal referred to the documentary evidence it had regard to at [20] of its reasons, and identified the matters to be considered in assessing the financial aspects of the relationship at

[24]. At [25]-[29], the Tribunal summarised the oral evidence given by the applicant and the sponsor about the financial aspects of the relationship. The Tribunal then said at [30]:

Overall, and due to the Tribunal's assessment of the case as a whole, which is explained further later, the Tribunal does not accept the parties' oral evidence and has formed the view that the various documents outlined above were generated to create a positive impression of the parties' relationship rather than as a genuine reflection of the financial aspects of their relationship. Given the Tribunal's concerns, the Tribunal places limited weight on the evidence of the financial aspects of the relationship.

101 I accept the Minister's submission that the approach of the Tribunal is sufficient to fulfil its obligations to consider the financial aspects of the relationship. The Tribunal has considered evidence in relation to each of the sub-paragraphs within reg 1.15A(3)(a) of the Regulations and has made a finding that it did not accept the oral evidence.

102 The Tribunal also found that the documentary evidence was generated to create a positive impression of the relationship. I agree with both parties that this does not amount to a finding that the documents are fraudulent, and I accept the Minister's submission that the Tribunal's finding reflects a view that the documents were created legitimately by the applicant and sponsor to reflect a relationship, rather than as a consequence of a genuine relationship. Such a finding was open to the Tribunal. It was also open to the Tribunal to consider its overall assessment of the relationship in placing limited weight on the financial aspects of the relationship.

103 I am satisfied that the Tribunal gave proper, genuine and realistic consideration to the financial aspects of the relationship. Ground 6 is not established.

CONCLUSION

104 I have found that none of the grounds raised by the applicant give rise to jurisdictional error. It follows that the application to this Court is dismissed.

I certify that the preceding one hundred and four (104) numbered paragraphs are a true copy of the Reasons for Judgment of Judge Ladhams.

Associate:

Dated: 15 June 2022

